

Docket No.: 2000874.00153US1
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Bradley R. Bowman et al.

Confirmation No.: 6122

Application No.: 10/624,098

Art Unit: 3626

Filed: July 21, 2003

Examiner: Kristine K. Rapillo

Title: PERSONALIZED HEALTH COMMUNICATION SYSTEM

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Dear Madam:

As required under § 41.37(a), this brief is filed more than two months after the Notice of Appeal filed in this case on April 16, 2009, and is in furtherance of said Notice of Appeal.

The fees required under § 41.20(b)(2), and any required petition for extension of time for filing this brief and fees therefor, are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief contains items under the following headings as required by 37 C.F.R. § 41.37 and M.P.E.P. § 1205.2:

- | | |
|------|-----------------------------------|
| I. | Real Party In Interest |
| II | Related Appeals and Interferences |
| III. | Status of Claims |
| IV. | Status of Amendments |
| V. | Summary of Claimed Subject Matter |

| | |
|------------|---|
| VI. | Grounds of Rejection to be Reviewed on Appeal |
| VII. | Argument |
| VIII. | Claims |
| Appendix A | Claims |
| Appendix B | Evidence |
| Appendix C | Related Proceedings |

I. REAL PARTY IN INTEREST

The real party in interest for this appeal is:

WebMD Corporation. 669 River Drive, Center 2, Elmwood Park, NJ 07407.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

A. Total Number of Claims in Application

There are 26 claims pending in application.

B. Current Status of Claims

1. Claims pending: 1-26
2. Claims allowed: None
3. Claims rejected: 1-26

C. Claims On Appeal

The claims on appeal are claims 1-26

IV. STATUS OF AMENDMENTS

All amendments that have been submitted have been accepted and Appendix A presents the pending claims including all amendments that have been accepted.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The claimed invention is a system or method for facilitating communication between people about related health conditions. Users, referred to as a message receiving users, define personal health message receiving criteria for determining messages to be received from other users who meet the personal health message receiving criteria. These criteria are stored on a computer in association with identifying information for the message receiving user. (see ¶ [0031])

The personal health message receiving criteria might include personal health-related factors that are included in the personal health information collected about each user. For example, they may include one or more personal characteristics such as gender, age or age ranges, smoking or non-smoking habits, exercising or non-exercising habits, or being overweight or underweight; predefined health conditions such as being pregnant, or having high blood pressure, elevated cholesterol, heart disease, diabetes (Type I or II), breast cancer, prostate cancer, colon cancer, etc.; and user-defined health conditions that the user enters or indicates by name. In the described embodiment the personal health message receiving criteria are correlated with corresponding concept unique identifiers (CUIs). (see ¶ [0032])

In essence, the personal health message receiving criteria identify personal health characteristics about which the user is willing to communicate with other users. For people having a particular health condition, the ability to discuss the condition with others who also have that health condition and are in similar circumstances can provide levels of understanding and information that are not otherwise readily available. (see ¶ [0033])

Other users, referred to as message transmitting users, define personal health message transmitting criteria for directing a selected message to other users whose personal health message

receiving criteria match the personal health message transmitting criteria. These criteria are also stored on a computer in association with identifying information for the message transmitting user. (see ¶ [0034])

The personal health message transmitting are also correlated with corresponding, concept unique identifiers and represent characteristics of a message receiving user with whom the message transmitting user would like to communicate. (see ¶ [0035])

The message transmitting users also submit messages (e.g., e-mail or network communication channel) for transmission to message receiving users with personal health message receiving criteria that conform to the personal health message transmitting criteria. The messages may include, for example, a statement of one or more specific health conditions and questions about treatments, consequences, etc. concerning the conditions. (see ¶ [0036])

The following example is presented in the application. Joe is a 47 year old male who consults his physician because of a chronic cough. After an examination and chest x-ray his physician diagnoses his condition as sarcoidosis. Joe's physician informs him-that this is an incurable condition, without a known cause, which affects about 40 out of every 100,000 individuals. He goes on to provide Joe with some information about sarcoidosis and recommends treatment with Prednisone, a steroid medication. In the example, Joe leaves the office with a diagnosis and some information, but he also wishes to talk to someone else with sarcoidosis--preferably someone like himself. So in accordance with personalized health communication process, Joe defines personal health message transmitting criteria indicating male, between ages 40 and 60, and sarcoidosis, and composes a message stating: "I was just diagnosed with sarcoidosis. How is this really going to affect me and my family?" (see ¶ [0037])

The system identifies message receiving users with personal health message receiving criteria that conform to (e.g. match) the personal health message transmitting criteria associated with messages received from message transmitting users. In the example mentioned above, the message transmitting criteria are male, between ages 40 and 60, and sarcoidosis, and the message

receiving criteria of a message receiving user conform to message transmitting criteria when the message receiving criteria designate each of the message transmitting criteria. (see ¶ [0038])

The system then transmits the message of the message transmitting user to the identified message receiving user(s). In one implementation, the message is transmitted to the message receiving user without identifying the message receiving user to the message transmitting user. The message may be transmitted as a standard e-mail message to an address that is predefined by the message receiving user. Upon receipt of the message, the message receiving user may choose to reply to the message transmitting user, such as by a reply e-mail message to an e-mail address included in the transmitted message. (see ¶ [0039])

Claims 1, 12, and 23 are presented in the tables below which map the recited elements to the relevant portions of the specification and figures:

| Features of Claim | Support in Specification |
|---|---|
| 1. A computer-implemented communication method comprising: | Fig. 1 ¶ [0013] |
| from each of a plurality of receiving users, receiving corresponding personal health message receiving criteria for determining messages to be received by that receiving user, | Fig. 2, block 58 ¶ [0031] |
| the corresponding personal health message receiving criteria for each user including health categories that are relevant to that receiving user; | ¶'s [0032] and [0033] |
| from a transmitting user, receiving a message and personal health message transmitting criteria for directing the received message to other users, | Fig. 2, blocks 60 and 62 ¶'s [0034] and [0036] |
| the personal health message transmitting | ¶ [0035] |

| Features of Claim | Support in Specification |
|---|------------------------------|
| criteria including health categories that are relevant to the received message or to the transmitting user; | |
| comparing the personal health message receiving criteria for each of the plurality of receiving users to the personal health message transmitting criteria to identify those users among the plurality of receiving users to whom the received message should be transmitted; and | Fig. 2, block 64 ¶ [0038] |
| transmitting the received message to the identified users among the plurality of receiving users. | Fig. 2, block 66 ¶ [0039] |

| Features of Claim | Support in Specification |
|---|------------------------------|
| 12. In a computer-readable medium, computer software comprising: | ¶'s [0023] and [0024] |
| software for receiving from each of a plurality of receiving users corresponding personal health message receiving criteria for determining messages to be received by that receiving user, | Fig. 2, block 58 ¶ [0031] |
| the corresponding personal health message receiving criteria for each user including health categories that are relevant to that receiving user; | ¶'s [0032] and [0033] |

| Features of Claim | Support in Specification |
|--|---|
| software for receiving from a transmitting user a message and personal health message transmitting criteria for directing the received message to other users, | Fig. 2, blocks 60 and 62 ¶'s [0034] and [0036] |
| the personal health message transmitting criteria including health categories that are relevant to the received message or to the transmitting user; | ¶ [0035] |
| software for comparing the personal health message receiving criteria for each of the plurality of receiving users to the personal health message transmitting criteria to identify those users among the plurality of receiving users to whom the received message should be transmitted; and | Fig. 2, block 64 ¶ [0038] |
| software for transmitting the received message to the identified receiving users among the plurality of receiving users. | Fig. 2, block 66 ¶ [0039] |

| Features of Claim | Support in Specification |
|--|------------------------------|
| 23. In a computer-readable medium, a data structure comprising: | |
| personal health message receiving criteria associated with receiving users for determining messages to be received from other users who conform to the personal health | Fig. 2, block 58 ¶ [0031] |

| Features of Claim | Support in Specification |
|---|---|
| message receiving criteria, | |
| the personal health message receiving criteria including personal or health characteristics relating to the receiving users; and | ¶'s [0032] and [0033] |
| personal health message transmitting criteria associated with transmitting users for directing a selected message to other users whose personal health message receiving criteria conform to the personal health message transmitting criteria, | Fig. 2, blocks 60 and 62 ¶'s [0034] and [0036] |
| the personal health message transmitting criteria including personal or health characteristics relating to the transmitting users. | ¶ [0035] |

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

§103(a) Obviousness Rejection:

The Examiner rejected claims 1-5, 7, and 12-16 under 35 U.S.C. §103(a) as being unpatentable over a the press release entitled “WellMed Introduces Industry’s First comprehensive Personal Health Management System Including Online Health Record” (WellMed, Inc., Oregon, August 23, 1999. PR Newswire) (hereinafter referred to as WellMed) in view of U.S. 5,827,180 to Goodman.

The Examiner rejected claims 23-26 under 35 U.S.C. § 103(a) as being unpatentable over Goodman in view of WellMed.

The question is whether the combination of WellMed in view of Goodman renders obvious claims directed to a computer-implemented method involving receiving message receiving criteria from receiving users, receiving a message and message transmitting criteria from a transmitting user, comparing the message receiving and message transmitting criteria to identify to which of the receiving users the message from the transmitting user should be transmitted, and then transmitting that message to those identified receiving users.

VII. ARGUMENT

§103(a) Obviousness Rejection of Claims 1-5, 7, and 12-16:

The Examiner rejected claims 1-5, 7, and 12-16 under 35 U.S.C. §103(a) as being unpatentable over a the press release entitled “WellMed Introduces Industry’s First comprehensive Personal Health Management System Including Online Health Record” (WellMed, Inc., Oregon, August 23, 1999. PR Newswire) (hereinafter referred to as WellMed) in view of U.S. 5,827,180 to Goodman.

Before examining the details of the examiner’s rejection, we wish to first point out that there is a fundamental difference between the approach used by the claimed invention and that used by the WellMed technology. More specifically, the claimed invention provides a mechanism by which a personal health message that is received from a particular user (referred to in the claim as a transmitting user) is forwarded to particular other users (referred to in the claims as receiving users). The mechanism employs message receiving criteria that are supplied by the receiving users and message transmitting criteria that are supplied by the transmitting user. The system compares the message transmitting criteria to the message receiving criteria to identify to which of the receiving users the message should be sent and then it sends the message to those identified users.

In contrast, the WellMed system is a health portal which enables users to store and manage personal health information online (see ¶ 1). The WellMed Personal Health Manager enables consumers to retrieve data that is customized to their interests. It does this by enabling a consumer

to generate a personalized home page providing access to that information within the system that is of interest to the consumer (see ¶ 8). It is not a message forwarding system.

Because of this fundamental difference, it is our contention that the WellMed system does not operate in the manner recited in the present claims. We now show this by addressing the arguments raised by the examiner in rejecting the claims.

The Examiner argues that WellMed teaches the first step of claim 1, which reads in part:

...from each of a plurality of receiving users, receiving corresponding personal health message receiving criteria for determining messages to be received by that receiving user.

In support of her assertion, she directs our attention to paragraph 8 of WellMed. We note, however, that the cited passage does not disclose or even suggest “personal health message receiving criteria.” The passage reads as follows:

WellMed's Personal Health Manager enables consumers to retrieve data that is customized for their interests and conditions. For example, a woman who is trying to stop smoking can access WellMed's Personal Health Manager through one of WellMed's partner portals and assess her health status using WellMed's Health Quotient (HQ(TM)) tool. The profile then generates a personalized homepage containing new smoking patch information, exercise recommendations and allergy alerts based on risk factors and interests identified during the HQ test. She will also have the option to enroll in one of WellMed's tailored improvement programs, such as the smoking cessation plan, to help her stop smoking. [emphasis added].

To the extent that this passage is about criteria, it is about criteria for retrieving data for display on a personalized homepage. It does not discuss or even hint at “message receiving criteria” of the type recited in claim 1.

The Examiner also argues that WellMed teaches “from a transmitting user, receiving a message and personal health message transmitting criteria for directing the received message to other users.” And in support of this assertion she directs our attention to paragraph 9 of WellMed. We note, however, that this passage is about storing and monitoring health information. It does not, in fact, refer to “receiving a message and personal health message transmitting criteria,” as argued by the Examiner. The passage states as follows:

Using WellRecord, any individual can store and monitor health information online with complete security, confidentiality and privacy. Family health information, such as a child's immunization records or an elderly parent's prescription medications, can be stored in WellRecord. This information can be easily accessed and provided to schools, new doctors and others. Additional news, information and access to online communities can be obtained through a password-protected personal health homepage. [emphasis added].

There is nothing in this passage about “message transmitting criteria for directing the received message to other users.” It does state that the stored information can be accessed by other users. But that occurs by allowing the other users, through the use of a shared password, to access a personal health homepage which contains the information.

The Examiner also argues that WellMed teaches “comparing the personal health message receiving criteria for each of the plurality of receiving users to the personal health message transmitting criteria to identify those users among the plurality of receiving users to whom the received message should be transmitted.” In support of this assertion she directs our attention to paragraph 16 of WellMed. But again we submit that this passage falls short of teaching the recited element. It is about instant messaging which is a communication technique that involves establishing a direct connection to the intended recipient. The cited passage states in full:

WellMed will also be introducing a customized instant messaging system for people with specific ailments. Individuals diagnosed with certain conditions can opt to be anonymously connected with other individuals in similar situations via their personal homepage. This is beneficial in the same way systems that match patients to clinical trials have been useful for physicians. [emphasis added].

Thus, the mechanism for identifying the intended recipient is the personal home page. It appears to suggest that a communication channel is opened up between the two users without either of them knowing who the other one is and that channel enables them to communicate with each other. There is no suggestion whatsoever that recipients are identified by “comparing the personal health message receiving criteria for each of the plurality of receiving users to the personal health message transmitting criteria,” as required by the claim. And there is no support whatsoever for concluding that messages are forwarded based on comparing transmitting and receiving criteria, as is also required by the claims.

We do recognize that the Wellmed document does mention email notifications. However, the WellMed document provides no details about how the email notifications are implemented, at least certainly none that could lead one to conclude that it operates as recited in the present claims. Such a system might work by having the user sign up to receive email alerts for various health categories that are supported by the portal. When new material is posted to a particular health category on the portal, the system checks to see who has signed up and sends them an alert. There is no basis for concluding that it is done by supplying health message transmitting criteria with the posting, comparing those criteria with health message receiving criteria, and based on the comparison transmitting the alert to the users for which matches occur. Moreover, the WellMed document does not even imply that it works as one might expect that it might work. There is simply no detail provided. In addition, we note that sending alerts notifying them that certain information is available through the portal, is not them same as sending those users that actual content that was posted.

We note that independent claim 12 includes limitations similar to those discussed above in connection with claim 1.

§103(a) Obviousness Rejection of Claims 23-26:

The Examiner rejected claims 23-26 under 35 U.S.C. § 103(a) as being unpatentable over Goodman in view of the press release entitled “WellMed Introduces Industry’s First comprehensive Personal Health Management System Including Online Health Record” (WellMed, Inc., Oregon, August 23, 1999. PR Newswire).

Regarding independent claim 23, the Examiner states that while Goodman teaches a computer-readable medium, he fails to teach a data structure comprising:

personal health message receiving criteria associated with receiving users for determining messages to be received from other users who conform to the personal health message receiving criteria, the personal health message receiving criteria including personal or health characteristics relating to the receiving users; and
personal health message transmitting criteria associated with transmitting users for directing a selected message to other users whose personal health message receiving criteria

conform to the personal health message transmitting criteria, the personal health message transmitting criteria including personal or health characteristics relating to the transmitting users.

To supply that which is missing, the Examiner relies on WellMed. Applicants, however, believe that WellMed does not, in fact, supply these missing features for the reasons stated above.

For at least the reasons stated above, we believe that the claims are in condition for allowance and therefore ask that they be allowed to issue.

VIII. CLAIMS APPENDIX

A copy of the claims involved in the present appeal is attached hereto as Appendix A.

Please apply any charges not covered, or any credits, to Deposit Account No. 08-0219, under Order No. 2000874.00153US1 from which the undersigned is authorized to draw.

Respectfully re-submitted,

Dated: November 16, 2009



Eric L. Prah
Registration No.: 32,590
Attorney for Applicant(s)

Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, Massachusetts 02109
(617) 526-6000 (telephone)
(617) 526-5000 (facsimile)

APPENDIX A

Claims Involved in the Appeal of Application Serial No. 10/624,098

1. A computer-implemented communication method comprising:
from each of a plurality of receiving users, receiving corresponding personal health message receiving criteria for determining messages to be received by that receiving user, the corresponding personal health message receiving criteria for each user including health categories that are relevant to that receiving user;
from a transmitting user, receiving a message and personal health message transmitting criteria for directing the received message to other users, the personal health message transmitting criteria including health categories that are relevant to the received message or to the transmitting user;
comparing the personal health message receiving criteria for each of the plurality of receiving users to the personal health message transmitting criteria to identify those users among the plurality of receiving users to whom the received message should be transmitted; and
transmitting the received message to the identified users among the plurality of receiving users.
2. The method of claim 1 in which the received message is transmitted to each identified receiving user without disclosing the identity of the receiving user to the transmitting user.
3. The method of claim 1 in which the identified receiving users include those for whom the personal health message receiving criteria include all of the personal health message transmitting criteria.
4. The method of claim 1 in which the identified receiving users include those for whom the personal health message receiving criteria include at least selected ones of the personal health message transmitting criteria.

5. The method of claim 1 wherein receiving corresponding personal health message receiving criteria from each of a plurality of receiving users includes receiving identifier of a health condition that relates to that receiving user and is selected from among predefined health conditions.

6. The method of claim 1 wherein receiving corresponding personal health message receiving criteria from each of a plurality of receiving users includes receiving identifier of a user-defined health condition that relates to that receiving user, the method further including correlating the user-defined health condition with a health terminology thesaurus having concept unique identifiers that correspond to and provide uniform characterizations of the user-defined health condition.

7. The method of claim 1 wherein receiving personal health message transmitting criteria includes receiving identifier of a health condition that relates to the transmitting user and is selected from among predefined health conditions.

8. The method of claim 1 wherein receiving personal health message transmitting criteria includes receiving identifier of a user-defined health condition that relates to the transmitting user, the method further including correlating the user-defined health condition with a health terminology thesaurus.

9. The method of claim 1 further comprising obtaining from each receiving user and the transmitting user personal health-related information about that user, the health-related information including one or more health-related terms that each corresponds to a health-related concept; and correlating with a health terminology thesaurus each of the one or more health-related terms with a single concept unique identifier that uniquely identifies a corresponding health-related concept, each concept unique identifier having associated with it one or more terms corresponding to a common health-related concept, ones of the terms being lay medical terms and not clinical medical terms.

10. The method of claim 9 in which computer implementation of the method employs a client computer and a server computer that are interconnected by a computer network the method further comprising:

providing at the client computer a user interface with which each user provides the personal health-related information about the user, the health-related information being defined by one or more health-related terms;

transmitting the personal health-related information about the user over the computer network to the server computer, the server computer storing the health terminology thesaurus; and

correlating each of the one or more health-related terms with a single concept unique identifier at the server computer.

11. The method of claim 10 in which the computer network includes the Internet.

12. In a computer-readable medium, computer software comprising:

software for receiving from each of a plurality of receiving users corresponding personal health message receiving criteria for determining messages to be received by that receiving user, the corresponding personal health message receiving criteria for each user including health categories that are relevant to that receiving user;

software for receiving from a transmitting user a message and personal health message transmitting criteria for directing the received message to other users, the personal health message transmitting criteria including health categories that are relevant to the received message or to the transmitting user;

software for comparing the personal health message receiving criteria for each of the plurality of receiving users to the personal health message transmitting criteria to identify those users among the plurality of receiving users to whom the received message should be transmitted; and

software for transmitting the received message to the identified receiving users among the plurality of receiving users.

13. The medium of claim 12 further comprising software for transmitting the received message to each identified receiving user without disclosing the identity of the receiving user to the transmitting user.

14. The medium of claim 12 in which the identified receiving users include those for whom the personal health message receiving criteria include all of the personal health message transmitting criteria.

15. The medium of claim 12 in which the identified receiving users include those for whom the personal health message receiving criteria include at least selected ones of the personal health message transmitting criteria.

16. The medium of claim 12 wherein the software for receiving from each of a plurality of receiving users corresponding personal health message receiving criteria includes a receiving user interface that allows the receiving user to select an identifier of a health condition that relates to that receiving user and is selected from among predefined health conditions.

17. The medium of claim 12 in which the software for receiving from each of a plurality of receiving users corresponding personal health message receiving criteria includes a receiving user interface that allows the receiving user to identify a user-defined health condition that relates to that receiving user, the computer software further including software for correlating the user-defined health condition with a health terminology thesaurus having concept unique identifiers that correspond to and provide uniform characterizations of the user-defined health condition.

18. The medium of claim 12 wherein the software for receiving from a transmitting user a message and personal health message transmitting criteria includes a transmitting user interface that allows the transmitting user to select an identifier of a health condition that relates to that transmitting user and is selected from among predefined health conditions.

19. The medium of claim 12 in which the software for receiving from a transmitting user a message and personal health message transmitting criteria includes a transmitting user interface that allows the transmitting user to identify a user-defined health condition that relates to the

transmitting user, the software further including software for correlating the user-defined health condition with a health terminology thesaurus.

20. The medium of claim 12 further comprising software for obtaining from each receiving user and the transmitting user personal health-related information about that user, the health-related information including one or more health-related terms that each corresponds to a health-related concept; and

software for correlating with a health terminology thesaurus each of the one or more health-related terms with a single concept unique identifier that uniquely identifies a corresponding health-related concept, each concept unique identifier having associated with it one or more terms corresponding to a common health related concept, ones of the terms being lay medical terms and not clinical medical terms.

21. The medium of claim 20 in which computer implementation of the medium employs a client computer and a server computer that are interconnected by a computer network, the medium further comprising:

software for providing at the client computer a user interface with which each user provides the personal health-related information about the user, the health-related information being defined by one or more health-related terms;

software for transmitting the personal health-related information about the user over the computer network to the server computer, the server computer storing the health terminology thesaurus; and

software for correlating each of the one or more health-related terms with a single concept unique identifier at the server computer.

22. The medium of claim 21 in which the computer network includes the Internet.

23. In a computer-readable medium, a data structure comprising:

personal health message receiving criteria associated with receiving users for determining messages to be received from other users who conform to the personal health message receiving

criteria, the personal health message receiving criteria including personal or health characteristics relating to the receiving users; and

personal health message transmitting criteria associated with transmitting users for directing a selected message to other users whose personal health message receiving criteria conform to the personal health message transmitting criteria, the personal health message transmitting criteria including personal or health characteristics relating to the transmitting users.

24. The data structure of claim 23 in which one or more of the personal health message receiving criteria and the personal health message transmitting criteria are correlated with concept unique identifiers that uniquely identify health-related characteristics.

25. The data structure of claim 24 in which each concept unique identifier includes numeric characters.

26. The data structure of claim 24 in which each concept unique identifier includes alpha-numeric characters.

IX. EVIDENCE APPENDIX

No evidence pursuant to §§ 1.130, 1.131, or 1.132 or entered by or relied upon by the examiner is being submitted.

X. RELATED PROCEEDINGS APPENDIX

No related proceedings are referenced in II above, hence copies of decisions in related proceedings are not provided.